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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/787,429

02/26/2004

Joseph D. Rippolone

67067-012

4762

26096 7590 05/11/2009
CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

05/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/787,429
Filing Date: February 26, 2004
Appellant(s): RIPPOLONE, JOSEPH D.

Matthew L. Koziarz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 February 2009
appealing from the Office action mailed 14 October 2008.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

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(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,503,219	BORTUGNO	4-1996
3,431,972	BERNARDI	3-1969
2,240,951	HAMJY	5-1941

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bortugno (U.S. Patent No. 5,503,219).

Independent Claim 12: Bortugno discloses a gutter section having a gutter section with a liquid passage (see "A" from attached Fig. 5 from Bortugno below) an air flow passage ("B" below), a gutter wall having a continuous cross section, separating the liquid passage and the air flow passage, the

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gutter wall has two spaced apart side walls (16) and a bottom wall (23) that define the liquid passage, and the air flow passage extends through the bottom wall (see portion 29 that extends through the bottom wall 23.) Applicant should respectfully note that the limitation "molded" line 1 indicates method steps and only the final product, the gutter section, is provided with patentable weight. Per the amendment that the gutter wall has a continuous cross section, please note that the gutter wall includes two spaced apart side walls and a bottom wall that the examiner identifies as portions 16 and 23 from the Bortugno reference. By observing Figures 1 and 2, the walls as shown in the drawings are continuous.

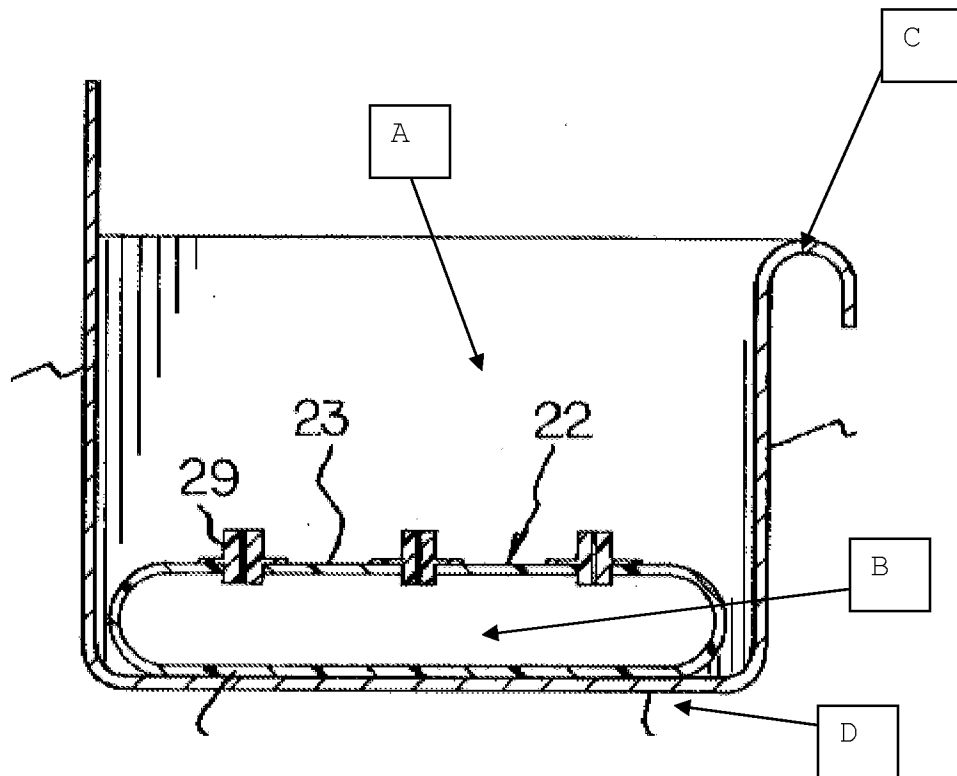


Figure 5 from Bortugno

Claim 2: the air flow passage extends within the bottom wall (see portion 29).

Claim 13: the airflow passage is parallel to the liquid flow passage (see Fig. 5, generally).

Claim 14: the gutter wall is common wall (portion 23) that at least partially defines the liquid passage and the airflow passage.

Claim 15: the gutter wall includes a solid body extending between a continuous upper surface ("C" above, the lip portion) and a continuous lower surface ("D" above).

Claim 16: the air flow passage extends through the solid body (Fig. 2: proximate 17) and is spaced apart from the upper surface and lower surface (the lower surface should be noted as the "exterior portion" of the gutter, and portion 24 spaces the air flow passage from the upper and lower surfaces.)

Claims 3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno.

Claims 3, 5 and 6: the prior art of record discloses the claimed invention except that the air flow passage is a multiple of air flow passages. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04. Further while the portions seem linear (as shown in Fig. 2), the prior art of record does not disclose that the members are non-linear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence

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that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04.

Claim 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno in view of Bernardi (U.S. Patent No. 3,431,972).

Claims 7 and 8: Bortugno discloses a gutter thawing system (Fig. 5) having a gutter section with a liquid passage ("A" above) and an air flow passage ("B" above) and a hot air supply (12). Bortugno does not disclose multiple of air flow passages or a multiple of gutter sections. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04.

Further, Bortugno discloses the air passages as linear, but not nonlinear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious

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absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04. Further, Bortugno discloses an input connector (27), but not a return connector and the combination of the limitations as claimed. Bernardi discloses a thawing system where the heating unit (Fig. 2) has an input and return (see Fig. 2, generally where the heating system is cyclic as shown, which results in an input and return.) It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the system in Bernardi (see Col. 2, lines 35-41) with the air flow passage in Bortugno because the systems are functionally equivalent and would perform equally as well. The Applicant should respectfully note that the term "molded" relates to a process for making the apparatus and only the final product, the apparatus, is provided patentable weight.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortugno in view of Bernardi as applied to claim 8 above, and further in view of Hamjy (U.S. Patent No. 2,240,851) as in the action dated 16 November 2007.

Claims 9 and 10: the prior art of record discloses the claimed invention except for the use of a manifold and a fan.

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Hamjy discloses a heating system that uses a manifold system and a fan (page 1, right column, lines 12-40). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a manifold and fan in conjunction with the system in Bortugno in view of Bernardi because manifolds are well known in the art for allowing the distribution of air flow in multiple directions and fans are well known in the art for aiding in the increase of air flow. The phrase "to raise a pressure of an airflow from said hot air supply to said manifold to above atmosphere" Claim 10, is a statement of intended use of the claimed invention and must result in a structural difference between the prior art of record and the claimed invention. If the prior art is capable of performing the limitation, then it meets the claim.

(10) Response to Argument

Rejection - 35 USC §102(b) of claims 2 and 12-16 as being anticipated by Bortugno:

The first issue is whether the rejection of Claim 12 was proper under 35 USC §102(b). The examiner maintains that the rejection is proper and that the Bortugno reference anticipates the claim. The claimed limitation requires that "a gutter wall [has] a continuous cross section" (line 3). The gutter wall

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"includes two spaced apart side walls and a bottom wall" (line 4). The examiner noted in the prior Office action (also noted above) that Bortugno has two spaced apart side walls (16) and a bottom wall (23). The applicant argues that portion 23 is separate from 16 and thus does not constitute a "continuous cross section" as claimed. The examiner respectfully disagrees. The fact that members 16 and 23 may be separate members has no bearing in defining a "continuous cross section". Applicant has not claimed that the members are in one piece, or provided other limitations to negate that the walls be separate: only that the walls have a continuous cross section. As noted in the rejection above, Figures 1 and 2 of Bortugno shows that members 16 and 23 are continuous. As a result, the examiner maintains that Bortugno anticipates the claim and the rejection was proper.

Applicant has respectfully not provided arguments addressing the dependent claims 2 and 13-15.

Regarding claim 16, the examiner respectfully disagrees with applicant's argument that portion "B" is not spaced from the continuous upper surface. As shown in attached Figure 5 above, "B" represents the air flow passage and "C" represents the upper surface. As shown in the labeling, "B" is spaced from

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"C", regardless of the amount. As a result, the examiner maintains the claim is anticipated and the rejection is proper.

Rejection - 35 USC §103(a) of claims 3, 5 and 6 as being obvious over Bortugno:

Applicant has respectfully not provided arguments addressing the dependent claims 3 and 6.

Regarding claim 5, the issue is whether it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the system in Bortugno to include nonlinear air flow passages. The examiner argues that the rejection was proper because to have nonlinear portions would be a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04. Applicant has respectfully not provided evidence to note that the configuration of the invention (i.e. having a curve in the system) is significant. The system in Bortugno can be shaped with nonlinear portions to conform to the structure that the system is being attached. The examiner maintains that to modify the system with nonlinear components is not significant and the rejection was proper.

Rejection - 35 USC §103(a) of claims 7 and 8 as being obvious over Bortugno in view of Bernardi:

The first issue regarding this rejection is whether the rejection citing duplication of parts was proper. The examiner maintains that the rejection was proper. While noting that the gutter sections in claim 7 vary in structure, the first limitation addressed was that there are a multiple of sections. Bortugno did not specifically provide this limitation, so the examiner stated to have this limitation would be obvious because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). The examiner further addressed the limitations relating to the varying gutter sections in the prior Office action.

The examiner further disagrees with applicant's argument that it would not be obvious to combine the return heating system of Bernardi with the system in Bortugno in a gutter section. Bortugno respectfully discloses a hot air system forced through members (Abstract), but it does not disclose the return system. Bernardi discloses that it is known to use a heating unit of a central heating system (Col. 2, lines 35-41) to remove frozen precipitation from a roof (Abstract). The

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systems function in the same manner: to supply hot air to remove frozen matter. The examiner stated it would be obvious to use the system because the two would function in the same manner. Applicant further argues the position that Bernardi discloses pumping liquid through the system, which would not be obvious to do with the system in Bortugno. Without conceding this issue, the examiner respectfully notes column 2, line 40 of Bernardi, which states a central heating system may be used. This would constitute hot air that would be similar to the hot air used in the system in Bortugno.

The applicant again argues against the examiner's position that it would be obvious to have nonlinear sections of the gutter as provided in the claim. The examiner maintains the same position for the reasons set forth above and that the rejection was proper.

Rejection - 35 USC §103(a) of claims 9 and 10 as being obvious over Bortugno in view of Bernardi and Hamjy:

Claims 9 and 10 depend from claim 8. Applicant has respectfully not provided arguments regarding these claims.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/William V Gilbert/

Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635

Conferees:

/R. E. C./

Supervisory Patent Examiner, Art Unit 3635

Marc Jimenez /MJ/